

AMENDED IN SENATE JANUARY 7, 2008

AMENDED IN SENATE APRIL 30, 2007

SENATE BILL

No. 723

Introduced by Senator Yee

February 23, 2007

An act to add Section 11778.5 to the Insurance Code, *and to add Article 2.1 (commencing with Section 4615) to Chapter 2 of Part 2 of Division 4 of the Labor Code*, relating to insurance, *and making an appropriation therefor*.

LEGISLATIVE COUNSEL'S DIGEST

SB 723, as amended, Yee. State Compensation Insurance Fund: *24-hour care pilot program: health system improvement study.*

Existing provisions of the California Constitution provide that the Legislature has plenary power to create and enforce a complete system of workers' compensation. A complete system of workers' compensation is required by the Constitution to make full provision for medical treatment for occupational injuries sustained by workers without regard to fault. Existing law establishes the State Compensation Insurance Fund, and authorizes the fund to transact workers' compensation insurance to the same extent as any other insurer, and subject to the powers and authority of the Insurance Commissioner.

~~This bill would authorize the Commission on Health and Safety and Workers' Compensation to conduct a study on the feasibility of a system of delivery of medical treatment to sick or disabled employees without regard to the cause of the sickness or disability, as specified.~~

This bill would make legislative findings and declarations relating to the absence of coordination between the workers' compensation insurance system and group health insurance.

This bill would authorize the fund to participate in a 24-hour care pilot project to be developed and implemented pursuant to statute and by regulations adopted by the Administrative Director of the Division of Workers' Compensation for a period of 6 years, commencing with the adoption of the regulations. During the pilot project, the fund would have the authority to contract with health care service plans or health insurers to be the exclusive providers of medical, surgical, and hospital treatment for both occupational and nonoccupational injuries and illnesses of employees of employers who purchase coverage from the fund, and who elect to purchase joint occupational and nonoccupational health care coverage.

This bill would specify various terms and conditions of the 24-hour care pilot project including costs, provision of treatment, dispute resolution, and eligibility.

The bill would require the Commission on Health and Safety and Workers' Compensation to monitor the program and to provide updates with specified information, at least annually, to the administration director, the Insurance Commissioner, and the Legislature. The bill would give the commission's researchers access to certain information, on a confidential basis, including information relating to premiums and costs, and other information obtained from program participants, as specified. The bill would appropriate \$2,000,000 from the Workers' Compensation Administration Revolving Fund for expenditure for purposes of this monitoring program without regard to fiscal years for the period of the pilot program.

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Section 4 of Article XIV of the California Constitution vests
- 4 the Legislature with plenary power to create and enforce a
- 5 complete system of workers' compensation.
- 6 (b) That constitutional provision requires that the system of
- 7 workers' compensation do the following:
- 8 (1) Include adequate provisions for the comfort, health and
- 9 safety, and general welfare of workers, and their dependents, for
- 10 support to the extent of relieving from the consequences of any

1 *injury or death incurred or sustained by workers in the course of*
2 *their employment, irrespective of the fault of any party.*

3 *(2) Require full provision for any medical, surgical, hospital,*
4 *and other remedial treatment required to cure and relieve from*
5 *the effects of that injury.*

6 *(3) Require full provision for adequate insurance coverage*
7 *against liability to pay or furnish compensation and full provision*
8 *for regulating that insurance coverage in all its aspects, including*
9 *the establishment and management of a state compensation*
10 *insurance fund.*

11 *(c) Injuries covered by workers' compensation typically result*
12 *in significantly higher medical expenditures than similar injuries*
13 *covered by group health insurance plans. Studies suggest that the*
14 *cost of treating injuries under workers' compensation is about*
15 *twice as high as treating the same injuries under a group health*
16 *plan.*

17 *(d) Group health coverage and workers compensation are*
18 *separate but overlapping systems that operate independently with*
19 *little communication among the health care providers caring for*
20 *the same patient. There is significant duplication of tests and*
21 *services and essentially no coordination of care or attention paid*
22 *to essential continuity of care.*

23 *(e) An integrated 24-hour care benefits program would combine*
24 *and coordinate the health care component of workers'*
25 *compensation with traditional group health coverage, using the*
26 *same set of health care providers. Such a program should also*
27 *result in higher patient and employer satisfaction, better medical*
28 *outcomes, better quality of care, better return-to-work experience,*
29 *and administrative efficiencies.*

30 *(f) The State Compensation Insurance Fund is the appropriate*
31 *entity to participate in a pilot program to explore the improved*
32 *health care outcomes expected from a 24-hour care approach.*

33 *SEC. 2. Section 11778.5 is added to the Insurance Code, to*
34 *read:*

35 *11778.5. The fund shall have the authority to participate in a*
36 *24-hour care pilot program to be developed and implemented by*
37 *Article 2.1 (commencing with Section 4615) of Chapter 2 of Part*
38 *2 of Division 4 of the Labor Code, and by regulations adopted by*
39 *the Administrative Director of the Division of Workers'*
40 *Compensation. The pilot program shall be for a period of six years,*

1 *commencing with the adoption of the regulations. During the pilot*
2 *program, the fund shall have the authority to contract with health*
3 *care service plans or health insurers to be the exclusive providers*
4 *of medical, surgical, and hospital treatment for both occupational*
5 *and nonoccupational injuries and illnesses of employees of*
6 *employers who purchase coverage from the fund, and who elect*
7 *to purchase joint occupational and nonoccupational health care*
8 *coverage.*

9 *SEC. 3. Article 2.1 (commencing with Section 4615) is added*
10 *to Chapter 2 of Part 2 of Division 4 of the Labor Code, to read:*

11
12 *Article 2.1. Twenty-Four Hour Care Pilot Program*
13

14 *4615. (a) The administrative director shall implement a*
15 *24-hour care pilot program in accordance with this article. During*
16 *the pilot program, employers who purchase workers' compensation*
17 *coverage from the State Compensation Insurance Fund shall have*
18 *the option to purchase workers' compensation coverage that*
19 *includes coverage for both occupational and nonoccupational*
20 *injuries and illnesses. The fund shall contract with health care*
21 *service plans or health insurers to be the exclusive providers of*
22 *medical, surgical, and hospital treatment for both occupational*
23 *and nonoccupational injuries and illnesses of employees. The pilot*
24 *program shall be for a period of six years, commencing upon the*
25 *adoption of regulations by the administrative director, which shall*
26 *be adopted no later than June 30, 2009.*

27 *(b) Each health care service plan or health insurer participating*
28 *in this program shall provide all occupational-related medical*
29 *treatment coverage required by the laws governing workers'*
30 *compensation without requiring any payment by the employee of*
31 *deductibles, copayments, or any share of the premium. Coverage*
32 *shall also include health coverage for employees for the treatment*
33 *of nonoccupational injuries and illnesses under the terms of the*
34 *contract with a health care service plan or health insurer.*

35 *(c) (1) Notwithstanding subdivision (c) of Section 4600, Section*
36 *4601, or Article 2.3 (commencing with Section 4616), any employee*
37 *who sustains a compensable injury or illness while covered by the*
38 *24-hour care program shall obtain medical treatment required*
39 *under Section 4600 as follows:*

1 (A) For any injury or illness sustained while an employee is
2 covered by the 24-hour care program, treatment shall be obtained
3 exclusively from the employer-arranged health care service plan
4 that is in effect for the employee on the date of service.

5 (B) The terms of employer financial responsibility and health
6 care service plan financial responsibility, and the extent of any
7 risk sharing for occupationally related medical treatment, may be
8 negotiated between the employer and the plan. In no case shall
9 the cost of occupational care be shifted to the employee's share
10 of the cost of nonoccupational coverage.

11 (C) For any injury or illness sustained while an employee is
12 covered by the 24-hour care program, treatment after an employer
13 ceases to participate in the program shall not be within the 24-hour
14 care program but shall be obtained in accordance with Article 2
15 (commencing with Section 4600) or Article 2.3 (commencing with
16 Section 4616), as applicable. If transfer of care is required because
17 the employer ceases to participate in the program or the employee
18 ceases coverage under a participating health care service plan,
19 the transfer shall be subject to Section 4616.2 or the equivalent
20 continuity of care regulations adopted by the administrative
21 director.

22 (D) This section shall not limit the right of an employee to be
23 treated by a personal physician predesignated in accordance with
24 subdivision (d) of Section 4600, if the personal physician is a
25 participating provider within a health care service plan under the
26 program.

27 (2) Within the 24-hour care program, all medical treatment,
28 utilization review of medical treatment, access to medical
29 treatment, and other medical treatment issues shall be governed
30 by Chapter 2.2 (commencing with Section 1340) of Division 2 of
31 the Health and Safety Code. Disputes regarding the provision of
32 medical treatment shall be resolved pursuant to Article 5.55
33 (commencing with Section 1374.30) of Chapter 2.2 of Division 2
34 of the Health and Safety Code. Determinations of medical
35 necessity, including treatment necessary to cure and relieve a
36 work-related injury or illness, shall be subject to Chapter 2.2
37 (commencing with Section 1340) of Division 2 of the Health and
38 Safety Code and shall not be subject to Section 4610, Section
39 4604.5, or Section 4062. Within 20 days after service of the
40 decision of the Director of Managed Health Care, pursuant to

1 subdivision (f) of Section 1374.33 of the Health and Safety Code,
2 an aggrieved party may file with the director an appeal of the
3 director's determination. Within five days of the filing of the
4 appeal, the director shall assign the appeal to an arbitrator. The
5 appeal shall not be consolidated with other issues for trial by a
6 workers' compensation administrative law judge. The burden of
7 proof shall be on the party objecting to the decision of the director.
8 Arbitration proceedings shall be conducted pursuant to regulations
9 adopted by the director, and the decision of the arbitrator shall
10 be served on the parties within 45 days of the filing of the appeal.
11 The findings of fact, order, or decision of the arbitrator shall have
12 the same force and effect as an order or decision of a workers'
13 compensation administrative law judge.

14 (3) An employer is eligible to participate in the 24-hour care
15 program only if the employer provides health care coverage for
16 nonoccupational injuries and illnesses for its employees through
17 a health care service plan licensed pursuant to the Knox-Keene
18 Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing
19 with Section 1340) of Division 2 of the Health and Safety Code),
20 or through a Taft-Hartley health and welfare fund that contracts
21 with a health care service plan. The employer is eligible to
22 participate in the program only if the health care service plan
23 agrees to participate in the 24-hour care program. An employer
24 shall be deemed to provide health care coverage if the employer
25 pays at least 80 percent of the cost of health care coverage for
26 nonoccupational injuries and illnesses for the employee, or if the
27 coverage plan is established through collective bargaining.

28 (4) An employer may elect to participate in the 24-hour care
29 program with respect to fewer than all of its employees if the
30 administrative director approves the designation of employees
31 who are included or excluded from the program and the
32 participating employees are designated either by inclusion or by
33 exclusion according to one or more of the following:

34 (A) Employees principally employed at one or more geographic
35 locations, or one or more specific business units, designated by
36 the employer.

37 (B) Employees represented by an exclusive bargaining agent
38 or certified bargaining agent in accordance with the National
39 Labor Relations Act or other state or federal law establishing

1 *collective bargaining rights for employees, as specified in*
2 *paragraph (5).*

3 *(C) Employees enrolled in a health care service plan*
4 *participating in the 24-hour care program.*

5 *(D) Employees subject to the compensation provisions of this*
6 *division.*

7 *(5) Notwithstanding any other provision of this section, no*
8 *employer that is required to bargain with an exclusive or certified*
9 *bargaining agent that represents employees of the employer in*
10 *accordance with the National Labor Relations Act or other state*
11 *or federal law establishing collective bargaining rights for*
12 *employees shall participate in the 24-hour care program with*
13 *respect to its represented employees unless authorized to do so by*
14 *mutual agreement between the bargaining agent and the employer.*
15 *When an employer's workforce includes groups of employees*
16 *represented by separate bargaining agents, the employer may*
17 *separately elect to participate with respect to each group of*
18 *employees in accordance with the employer's agreement with each*
19 *groups' bargaining agent.*

20 *(6) The administrative director shall adopt regulations*
21 *specifying the information that must be provided by employers*
22 *applying to participate in the 24-hour care program. The*
23 *administrative director shall establish criteria for approval of*
24 *applications that are consistent with the goals of the 24-hour care*
25 *program and with the purpose of the demonstration project to*
26 *evaluate the program. No application fee shall be required. The*
27 *regulations shall consider approving any medical care delivery*
28 *system that has already been approved as a health care*
29 *organization pursuant to Section 4600.5 or a medical provider*
30 *network pursuant to Article 2.3 (commencing with Section 4616).*
31 *The administrative director shall not approve an application that*
32 *designates fewer than all of the employer's employees unless the*
33 *designation complies with paragraphs (4) and (5) and the employer*
34 *demonstrates to the satisfaction of the administrative director that*
35 *all of the following requirements have been met:*

36 *(A) The designation is not unfairly discriminatory.*

37 *(B) The designation furthers the purposes of the demonstration*
38 *project and is not based on age, gender, workers' compensation*
39 *claim history, health history, health condition, or any similar*
40 *individual characteristics.*

1 (C) The designation serves a legitimate business purpose of the
2 employer, which may include the creation of experimental groups
3 and control groups for purpose of evaluation of the program.

4 (D) The designation will not cause undue confusion or
5 uncertainty over whether an employee is assigned to the program.

6 (E) The employer proposes an adequate means to inform each
7 designated employee that he or she is assigned to the program.

8 (7) Workers' compensation insurers and self-insured employers
9 participating in the program shall inform the administrative
10 director of the inception of coverage or group membership for any
11 employee in the 24-hour care program in accordance with
12 regulations issued by the administrative director.

13 (8) The approval of an application shall expire upon the
14 expiration of the term of the agreement between the employer and
15 the health care service plan providing medical treatment required
16 under Article 2 (commencing with Section 4600), unless the
17 contract between the employer and the health care service plan is
18 renewed for another year and the administrative director is notified
19 of the renewal of coverage.

20 (9) An employer shall give a notice to every employee who is
21 subject to the 24-hour care program no later than the date of hire
22 or the effective date of the employer's participation in the 24-hour
23 care program, whichever occurs later, and within one working
24 day after an employee files a claim form under Section 5401. The
25 administrative director may, by regulation, require an additional
26 notice when the employee's enrollment in a health care service
27 plan is changed or when the employee ceases to be covered by the
28 24-hour care program. The notice shall be given in the form and
29 manner prescribed by the administrative director. The
30 administrative director shall prescribe the mandatory contents of
31 the notice informing employees of the means of obtaining medical
32 treatment for occupational injuries, including the means of
33 obtaining medical treatment that may be required when the
34 employee is no longer covered by the employer-provided health
35 care coverage or the employer no longer participates in the
36 24-hour care program. The notice shall also inform employees of
37 the right to treatment for occupational injuries and illnesses
38 without deductible or copayment, and inform employees of the
39 method of receiving reimbursement of any copayment or deductible
40 that has been paid by the employee for treatment to which the

1 *employee was entitled pursuant to this section to receive without*
2 *copayment or deductible.*

3 *(10) The 90-day period prescribed in subdivision (b) of Section*
4 *5402 shall not begin to run following the filing of a claim form*
5 *under Section 5401 until one of the following occurs:*

6 *(A) The employee is disabled from work for more than three*
7 *days as a result of the injury.*

8 *(B) The employee is medically restricted to modified or*
9 *alternative work for more than 90 days as a result of the injury.*

10 *(C) The employer fails or refuses to furnish medical treatment*
11 *in accordance with this section.*

12 *(D) The employer has notice that the injury has resulted in*
13 *permanent impairment.*

14 *(11) Treatment provided for an occupational injury or illness*
15 *under the 24-hour care program shall not be considered for the*
16 *purposes of subdivision (c) of Section 5405 if the treatment was*
17 *provided prior to the filing of a claim form pursuant to Section*
18 *5401, or within 90 days following the filing of the claim form*
19 *pursuant to Section 5401, or after the rejection of liability pursuant*
20 *to subdivision (b) of Section 5402.*

21 *(d) The administrative director shall adopt regulations to*
22 *implement the 24-hour care program. The regulations may provide*
23 *for separate data reporting requirements for the reporting of*
24 *injuries and related claims data.*

25 *(e) (1) The Commission on Health and Safety and Workers'*
26 *Compensation shall monitor the pilot program commencing with*
27 *the adoption of regulations, providing updates at least annually*
28 *to the administrative director, the Insurance Commissioner, and*
29 *the Legislature. The commission's review shall include the*
30 *following:*

31 *(A) A comparison of employer experience for treatment of*
32 *occupational injuries between employers who participate in the*
33 *pilot program and employers who do not.*

34 *(B) Return-to-work outcomes for employees participating in the*
35 *pilot program when the occupational injury results in lost time*
36 *from work.*

37 *(C) Numbers and percentages of employers that opt for 24-hour*
38 *care coverage, and a comparison of results among different sized*
39 *employers participating in the pilot program.*

1 (D) Determination of employer and employee satisfaction with
2 24-hour care coverage, whether there have been better medical
3 outcomes, better quality, and greater continuity of care.

4 (E) Determination of the percentage of occupational injury
5 claims litigated specifying by percentage the types of dispute giving
6 rise to that litigation, and a comparison of these litigation
7 determinations for 24-hour care and non-24-hour care coverages.

8 (F) Any other data deemed appropriate by the commission.

9 (2) Researchers employed by or under contract to the
10 commission shall be granted access to information pursuant to
11 subparagraph (B) of paragraph (3) of subdivision (b) of Section
12 138.7 and information from the following additional sources under
13 equivalent guarantees of confidentiality:

14 (A) The administrative director shall make available all
15 information obtained from participants in connection with the
16 demonstration program.

17 (B) The administrative director, the Insurance Commissioner,
18 and the Workers' Compensation Insurance Rating Bureau shall,
19 as applicable, make information available about self-insured
20 employers and insured employers, including, as applicable, payroll
21 and premium and incurred losses, and paid losses and other
22 information maintained by the administrative director or the
23 bureau that is reasonably required for the study concerning
24 participants in the demonstration program.

25 (f) Notwithstanding Section 13340 of the Government Code, the
26 sum of two million dollars (\$2,000,000) is hereby appropriated
27 from the Workers' Compensation Administration Revolving Fund
28 to the Commission on Health and Safety and Workers'
29 Compensation for purposes of the monitoring program specified
30 in subdivision (e), for expenditure without regard to fiscal years
31 for the period of the 24-hour care pilot program.

32 ~~SECTION 1. Section 11778.5 is added to the Insurance Code,~~
33 ~~to read:~~

34 ~~11778.5. (a) It is the policy of the Legislature to improve the~~
35 ~~workers' compensation and nonoccupational disability health care~~
36 ~~delivery systems by promoting prompt and efficient delivery of~~
37 ~~high quality medical care.~~

38 ~~(b) In furtherance of this policy it is the intent of the Legislature~~
39 ~~to determine whether it is feasible to establish a seamless health~~

1 ~~system providing medical care to sick or disabled employees~~
2 ~~without regard to the cause of the disability.~~

3 ~~(e) In furtherance of this objective the Commission on Health~~
4 ~~and Safety and Workers' Compensation may conduct a study, in~~
5 ~~consultation with the State Compensation Fund, and report to the~~
6 ~~Legislature on or before June 30, 2008, on the feasibility of a~~
7 ~~system of delivery of medical treatment to sick or disabled~~
8 ~~employees without regard to the cause of the sickness or disability.~~

9 ~~(d) The study may include, but not be limited to, potential~~
10 ~~savings, obstacles to implementation, possible interference with~~
11 ~~the primary mission of the participating organizations, and~~
12 ~~practicality of the system.~~